



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2879

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120010.

The City of Houston (the "city") received a request for information "as to the status of the lights at" a particular intersection on a specified date and time, and "whether there were any subsequent remedial measures to correct the lights, if in fact they were malfunctioning." You submit information you say is responsive to the request, but claim that it may be withheld under section 552.103(a) of the Government Code.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

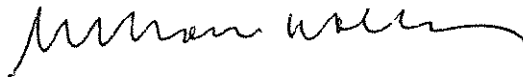
You provide a letter the requestor's attorney has submitted to the city. The attorney says that the requestor will claim compensation in a stated amount from the city for injuries sustained as a result of the city's negligence "in failing to correct the malfunctioning light." The letter states that its purpose "is to put the [city] on notice pursuant to [Texas Civil Practice and Remedies Code] § 101.101." You also submit an affidavit of the assistant city

attorney handling this case. The city's attorney states his belief that the requestor will bring suit against the city in this matter, and that the requested information relates to such anticipated litigation and should accordingly be withheld. Based on these representations, we conclude that you may withhold the requested information at this time under section 552.103(a).

Please note, however, that absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize the governmental body to withhold materials which have already been made available to the public. Open Records Decision No. 436 (1986).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 120010

Enclosures: Submitted documents

cc: Mr. Alfred R. McCullough, Jr.
Attorney at Law
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(w/o enclosures)